

Message Text

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TO AMEMBASSY DOHA IMMEDIATE

AMEMBASSY JIDDA IMMEDIATE

AMEMBASSY ABU DHABI

AMEMBASSY KUWAIT

AMEMBASSY MANAMA

AMEMBASSY MUSCAT

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C O R R E C T E D C O P Y-CLASSIFICATION CORRECTION

E.O. 11652: NA

TAGS: MASS, NA, SS, SA, PFOR, US

SUBJECT: ALLEGED LOCKHEED PAYOFFS TO FOREIGN GOVERNMENT
OFFICIALS

JIDDA FOR ASSISTANT SECRETARY ATHERTON

REFS: DOHA 1429 AND 1430 (NOTAL)

1. FOLLOWING FOR POSTS' INFORMATION AND USE IN RESPONSE
TO POSSIBLE HOST GOVERNMENT QUERIES IS TEXT OF SELF-
EXPLANATORY LETTER FROM SECRETARY TO ATTORNEY GENERAL
DATED NOVEMBER 28, 1975 ON ABOVE SUBJECT. LETTER FILED IN
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U.S. DISTRICT COURT FOR DISTRICT OF COLUMBIA DECEMBER 11
ALONG WITH PROPOSED COURT ORDER WHICH RESULTED FROM EX-
TENSIVE CONSULTATIONS AMONG REPRESENTATIVES OF DEPARTMENT,
SEC AND JUSTICE. LETTER IS MATTER OF PUBLIC RECORD AND

HAS RECEIVED SUBSTANTIAL PRESS COVERAGE.

QUOTE: I AM WRITING TO REQUEST THAT YOU EXERCISE YOUR AUTHORITY UNDER SECTION 516 OF TITLE 28 OF THE UNITED STATES CODE TO FILE A SUGGESTION OF INTEREST OF THE UNITED STATES IN A MATTER NOW PENDING BEFORE JUDGE JOHN H. PRATT, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

THE CASE BEFORE JUDGE PRATT, BEGIN UNDERLINING SECURITIES AND EXCHANGE COMMISSION V. LOCKHEED AIRCRAFT CORP. ET. AL. END UNDERLINING, MISC. NO. 75-0189, CONCERNS THE EFFORT OF THE SECURITIES AND EXCHANGE COMMISSION TO ENFORCE A SUBPOENA AND SUBPOENA BEGIN UNDERLINING DUCES TECUM END UNDERLINING OF JUNE 19, 1975, AGAINST THE LOCKHEED CORPORATION. THE SUBPOENAS ARE FOR TESTIMONY AND THE PRODUCTION OF DOCUMENTS IN CONNECTION WITH AN INVESTIGATION OF ALLEGEDLY IMPROPER ACTIVITIES BY LOCKHEED, INCLUDING UNREPORTED PAYMENTS TO FOREIGN OFFICIALS. LOCKHEED HAS FILED A CROSS-MOTION AND PROPOSED AN ORDER WHICH WOULD REQUIRE THE COMPANY TO COMPLY WITH THE SUBPOENAS, WITH PROVISION, HOWEVER, FOR PROTECTION FROM PUBLIC DISCLOSURE OF THE NAMES AND NATIONALITIES OF CERTAIN FOREIGN PERSONS IDENTIFIED IN THE SUBPOENAED DOCUMENTS OR IN FUTURE DEPOSITIONS.

ON NOVEMBER 19, 1975, ROGERS AND WELLS, COUNSEL FOR LOCKHEED WROTE TO ME FORMALLY REQUESTING THE DEPARTMENT OF STATE TO FILE A SUGGESTION OF INTEREST IN THE CASE. ACCORDINGLY, OFFICERS OF THE DEPARTMENT HAVE EXAMINED SOME OF THE DOCUMENTS UNDER SUBPOENA WHICH CONTAIN THE NAMES OF OFFICIALS OF FRIENDLY FOREIGN GOVERNMENTS ALLEGED TO HAVE RECEIVED COVERT PAYMENTS FROM LOCKHEED. AS THE DEPARTMENT HAS STATED ON MANY OCCASIONS, THE MAKING OF ANY SUCH PAYMENTS AND THEIR DISCLOSURE CAN HAVE GRAVE CONSEQUENCES FOR SIGNIFICANT FOREIGN RELATIONS INTERESTS OF THE UNITED STATES ABROAD. WE REITERATE OUR STRONG CONDEMNATION OF ANY SUCH PAYMENTS, BUT WE MUST NOTE THAT PREMATURE DISCLOSURE TO THIRD PARTIES OF CERTAIN OF THE LIMITED OFFICIAL USE
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NAMES AND NATIONALITIES OF FOREIGN OFFICIALS AT THIS PRELIMINARY STAGE OF THE PROCEEDINGS IN THE PRESENT CASE WOULD CAUSE DAMAGE TO UNITED STATES FOREIGN RELATIONS. WE WISH TO EMPHASIZE THAT OUR EXPRESSION OF INTEREST PERTAINS ONLY TO A VERY SMALL NUMBER OF DOCUMENTS. WE WOULD BE PLEASED, SHOULD JUDGE PRATT SO DESIRE, TO HAVE REPRESENTATIVES OF THE DEPARTMENT MEET WITH HIM AND COUNSEL FOR THE PARTIES BEGIN UNDERLINING IN CAMERA END UNDERLINING, AND DISCUSS THE PRECISE LIMITS OF THE DEPARTMENT'S AREA OF CONCERN.

THE DEPARTMENT HAS STATED AND REAFFIRMS ITS RESOLVE NOT

TO SHIELD AMERICAN FIRMS WHICH HAVE MADE SUCH PAYMENTS FROM LEGITIMATE LAW ENFORCEMENT ACTIONS BY RESPONSIBLE AUTHORITIES OF EITHER THE HOST COUNTRY OR THE UNITED STATES. OUR INTEREST IN HAVING CERTAIN DOCUMENTS IN THIS CASE PROTECTED GROWS SIMPLY OUT OF OUR DESIRE THAT DOCUMENTS WHICH CONTAIN UNCORROBORATED, SENSATIONAL AND POTENTIALLY DAMAGING INFORMATION NOT BE MADE PUBLIC AS LONG

AS THAT IS NOT NECESSARY FOR PURPOSES OF EFFECTIVE LAW ENFORCEMENT. THE DEPARTMENT OF STATE WISHES TO MAKE CLEAR THAT IT REQUESTS PROTECTION FOR THE FOREIGN POLICY INTERESTS OF THE UNITED STATES ONLY TO THE EXTENT THAT THIS CAN BE ACCOMPLISHED WITHOUT IMPEDING INVESTIGATION AND ENFORCEMENT ACTIONS BY AUTHORIZED AGENCIES OF THE UNITED STATES. IN THIS CASE, THE DEPARTMENT OF STATE RESPECTFULLY DEFERS TO THE JUDGMENT OF THE COURT AS TO WHETHER A PROTECTIVE ORDER CAN BE FASHIONED WHICH WILL PREVENT PREMATURE DISCLOSURE TO THIRD PARTIES OF THE NAMES AND NATIONALITIES OF CERTAIN FOREIGN OFFICIALS WITHOUT IMPEDING ACCESS TO THE INFORMATION IN QUESTION BY APPROPRIATE LAW ENFORCEMENT BODIES.

I WOULD APPRECIATE YOUR BRINGING THE VIEWS OF THE DEPARTMENT OF STATE ON THIS MATTER TO THE ATTENTION OF JUDGE PRATT. END QUOTE.

2. PROTECTIVE ORDER APPROVED BY COURT, AND SUBSEQUENTLY AMENDED RETROACTIVELY, SUBSTANTIALLY REFLECTS PROPOSED ORDER DESCRIBED IN PARA 1 WHICH WAS SUBMITTED WITH LIMITED OFFICIAL USE
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SECRETARY'S LETTER. COURT ORDER PROVIDES THAT LOCKHEED DOCUMENTS SUBPOENAED BY SEC WILL REMAIN UNDER COURT'S JURISDICTION AND THAT SEC CANNOT DISCLOSE THEM OR INFORMATION OBTAINED SOLELY FROM THE THIRD PARTIES UNTIL COURT HAS RULED UPON POSSIBLE OBJECTIONS TO SUCH ACTION BY INTERESTED PARTIES AND AGENCIES. FOREGOING RESTRICTIONS, HOWEVER, ARE MADE SUBJECT TO PROVISIO THAT THEY WILL NOT AFFECT ABILITY OF SEC TO (I) UTILIZE SUCH DOCUMENTS, OR INFORMATION OBTAINED THEREFROM, IN CONNECTION WITH ANY INVESTIGATIVE PROCEEDING; (II) REFER DOCUMENTS OR INFORMATION TO AN AGENCY OF THE GOVERNMENT WITH LAW ENFORCEMENT RESPONSIBILITIES SO LONG AS SUCH AGENCY SUBJECTS ITSELF TO THE JURISDICTION OF THIS COURT AND TO THE TERMS OF THIS ORDER; OR (III) INITIATE, PROSECUTE, OR RESPOND TO AN APPROPRIATE REQUEST BY THE DEPARTMENT OF JUSTICE TO INITIATE OR PROSECUTE, ANY CIVIL ACTION, ADMINISTRATIVE PROCEEDING, REFERRAL OF INFORMATION TO THE DEPARTMENT OF JUSTICE, OR REPORT OF INVESTIGATION, PROVIDED FOR UNDER RELEVANT FEDERAL LAWS.

3. PROVISIO MEANS THAT FOLLOWING CONCLUSION OF INVESTIGATION SEC COULD DISCLOSE NAMES OF ALLEGED RECIPIENTS OF PAYOFFS IF COMMISSIONERS OF SEC (AS DISTINCT FROM SEC STAFF) DECIDED SUCH ACTION WAS ESSENTIAL FOR ENFORCEMENT OF FEDERAL LAW. WE ARE ASSURED BY SEC CHAIRMAN THAT COMMISSION WILL ACT IN MOST RESPONSIBLE MANNER IN PROCESSING THIS CASE AND THAT IT WOULD SOLICIT OUR VIEWS

IN EVENT IT CONSIDERED DISCLOSURE OF NAMES ESSENTIAL TO ENFORCEMENT OF SECURITIES LAWS. UNDER CIRCUMSTANCES, WE BELIEVE DEPARTMENT COULD NOT ADVOCATE ANY GREAT PROTECTION FOR DOCUMENTS AND THEIR CONTENTS WITHOUT TAKING UNTENABLE POSITION THAT U.S. INTEREST IN THEIR PROTECTION SHOULD OVERRIDE ANY U.S. INTEREST IN ENFORCING U.S. LAW.
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